both there is the same notice of disseisin. Further, it is generally admitted that the statutes of limitation perfect a defective title in one who with knowledge, or at least with suspicion, of his own wrong has occupied another's land to a definite boundary for more than the statutory period.[9] It is then just that such statutes should be considered equally to perfect the defective title in one who innocently occupies another's land. In either case there is the same hostility to the world at large. Why should the innocent occupant of another's land be regarded with less favor than a conscious wrongdoer?

DAMAGES IN FOREIGN CURRENCY

In times of depreciated and fluctuating currencies the determination of the date governing the rate of exchange becomes important whenever damages are assessed in a foreign currency. In any case where one or more of the operative facts occurred without the territorial limits of the forum, many questions may arise as to the legal consequences to be attached to those facts by the law of the forum.[1] But assuming that damages have been properly assessed, what is the date upon which the rate of exchange shall be taken for the purpose of computing the damages in the currency of the forum.[2] A classification of the cases with reference to their operative facts may aid in the solution of this rather novel and perplexing problem.

The question arose from a tort action in the recent case of *Owners of S. S. Celia v. Owners of S. S. Volturno* (1921, H. L.) 37 T. L. R. 969. Due to the defendant's negligence, a collision occurred in which the plaintiff's ship was damaged. The collision occurred on December 17, 1917; the ship was detained for temporary repairs at Gibraltar from December 25, to December 30, 1917, and for permanent repairs at Newport News from January 24 to February 18, 1918. A part of the plaintiff's loss was due to the fact that the vessel was at all of these dates under hire to the Italian Ministry of Marine, and the plaintiffs received no pay therefor during the periods of detention for repairs. The damages were assessed in Italian lire and, for the purpose of entering judgment in English currency, it was held that they should be converted at

[9] *Ibid.* 1940. Tiffany, in discussing the question of necessity of claim of title so that the statute may run, refers to ". . . . the general acceptance of the view that, in the absence of an express statutory requirement to that effect, the statute will run regardless of whether the wrongful possession was taken under a *bona fide* claim of right." An interesting case in point is *Virginia Midland Ry. v. Barbour* (1899) 97 Va. 118, 33 S. E. 554.

[1] On theory the forum has the power to attach any legal consequences it sees fit. See Lorenzen, *The Theory of Qualifications and the Conflict of Laws* (1920) 20 COL. L. REV. 268-280.

[2] "The court has only jurisdiction to award damages in English money" *Di Ferdinando v. Simon, Smits & Co.* [1920, C. A.] 3 K. B. 409, 412; see *Marburg v. Marburg* (1866) 26 Md. 8, 21.

the rate prevailing at "the time when the actual loss for each detention was incurred."[3] While the majority opinion suggests that, in cases of contract or tort, the rate of exchange decided upon should be the rate at the time of loss by "breach or in consequence of the wrong,"[4] the general discussion, and most of the cases cited as controlling, point to the date of breach of duty as the proper date. But if this date is meant, the instant case is inconsistent, for the collision—and hence the defendant's breach of duty—occurred sometime before the periods of detention. If the periods of detention are meant as the only possible date, then what disposition should be made of cases where there is either no detention or where the detention extends over a long period of time, during which the rate fluctuates?

Another class of cases in which the problem arises is where the damages allowed for the dishonor of negotiable paper are assessed in a foreign currency. The early cases are not in agreement.[5] The current decisions generally hold that the owner of a dishonored bill is entitled, besides interest and charges, to an amount in the currency of the forum which will purchase a good bill drawn in the foreign currency at the rate of exchange prevailing on the date of dishonor,—denominated "re-exchange."[6] There may be situations, however,

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[3] Few cases have arisen in tort where the damages are assessed in a foreign currency. In *The Verdi* (1920, S. D. N. Y.) 268 Fed. 908, the plaintiff's vessel was injured in New York Harbor in September, 1915. Permanent repairs were made in England and paid for in January, 1916. *Held,* that the latter date was the proper one for computing the rate of exchange. This is a somewhat different date from that laid down in the principal case. Cf. *The Hurona* (1920, S. D. N. Y.) 268 Fed. 910, where the same judge held, in an action to recover a loan, that the rate existing at the date of judgment was the proper one.

[4] See instant case at page 970. The dissenting judge (Lord Carson) argues for the date of judgment as proper. *Ibid.* 972. The lira having fallen so much in value, manifestly, if the rate be computed as of this date, the plaintiff would not be adequately compensated; for the theory of damages is that the plaintiff should, so far as money can do so, be placed as nearly as possible in the same position that he would have been in had the defendant not failed to perform his duty. See Sedgwick, *Damages* (2d ed. 1909) 15; Roscoe, *Damages in Maritime Collisions* (1909) 4; *Wertheim v. Chicoutimi Pulp Co.* [1911, P. C.] A. C. 301, 307.

[5] In New York the plaintiff was formerly allowed, according to a custom of merchants, to recover the face of a bill at the rate prevailing at the time of dishonor, together with twenty per cent damages and interest. *Graves v. Dash* (1814, N. Y. Sup. Ct.) 12 John. 17. In Massachusetts he was allowed ten per cent. *Grimshaw v. Bender* (1809) 6 Mass. 157; cf. the recent case of *Amer. Express Co. v. Cosmopolitan Trust Co.* (1921, Mass.) 132 N. E. 26; see 2 Daniel, *Negotiable Instruments* (6th ed. 1913) sec. 1438; in *Taan v. LeGaux* (1793, Pa.) 1 Yeates, 204, the rate existing at the time of judgment was held proper.

[6] *Simonoff v. Granite City Nat. Bank* (1917) 279 Ill. 248, 116 N. E. 636; *Pavenstedt v. New York Life Ins. Co.* (1911) 203 N. Y. 91, 96 N. E. 104; *Gross v. Mendel* (1916) 171 App. Div. 237, 157 N. Y. Supp. 357; *Suse v.*

where subsequent to the date of dishonor the exchange has gone against the plaintiff and he thereby suffers loss.[7]

A third situation is where the duty violated by the defendant does not arise out of contract or tort.[8] In practically all cases of this kind the date when the defendant should have performed is considered the proper one for taking the rate of exchange. In most of them, too, the rate is favorable to the plaintiff; and one might well inquire whether the courts would stand by the rule if the converse of this were true.[9]

When the defendant has broken his contract (negotiable paper not being involved) and the damages are assessed in a foreign currency, the authorities are not in accord. Some apply the date of breach,[10] others the date of judgment,[11] a few the date of trial.[12] If any of these dates is considered as the only possible one, it is easy to think of situations in which the plaintiff would be put either in a much better position than he would have been in had the contract been performed, or else in a much worse position. There is a seeming injustice in either of these results.

It is interesting to note, however, that, in most of the cases in these four classes, the courts seem to have attempted—perhaps unconsciously—to apply a date for taking the rate of exchange which would be favorable to the plaintiff.

It seems impossible, therefore, to fix a date for ascertaining the

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Pompe (1860, C. P.) 8 C. B. 538; see 2 Daniel, *op. cit.* sec. 1445; 2 Sedgwick, *Damages* (9th ed. 1912) sec. 700; see Fraenkel, *Some Aspects of the Law Relating to Foreign Exchange* (1920) 20 COL. L. REV. 832, 836; *ibid.* 922; *contra, Cohn v. Boulken* (1920, K. B.) 36 T. L. R. 767 (the date of trial was held the proper date).

[7] "It might not be unreasonable to allow the plaintiff to recover on the rate most favorable to him within a reasonable time after the default, ... for he might have had to borrow or draw re-exchange to cover his necessities at any time within that period." (1916) 28 HARV. L. REV. 873.

[8] *Cockerell v. Barber* (1810, Ch.) 16 Ves. 461 (legacy payable in Indian rupees); *Scott v. Bevan* (1831, K. B.) 2 Barn. & Ad. 78 (foreign judgment); *Manners v. Pearson* [1898] 1 Ch. 581 (account for money due under contract with plaintiff's testator; the court disregarded the contract and treated the case as one of ordinary account); *Sheehan v. Dalrymple* (1869) 19 Mich. 239 (contribution between tenants in common). See also *Wormser Bros. v. Marroquin & Co.* (1918, C. C. A. 5th) 249 Fed. 428, 430.

[9] See (1921) 19 MICH. L. REV. 652, 654.

[10] *Lebeaupin v. Crispin & Co.* [1920] 2 K. B. 714; *Barry v. Van Den Hurk* [1920] 2 K. B. 709; *Di Ferdinando v. Simon & Co., supra* note 2; NOTES (1921) 34 HARV. L. REV. 422; (1920) 20 COL. L. REV. 914; (1921) 5 MINN. L. REV. 146; Cf. *Katcher v. Amer. Express Co.* (1920) 94 N. J. L. 165, 109 Atl. 741.

[11] *Kirsh v. Allen* (1919, K. B.) 36 T. L. R. 59, overruled in *Di Ferdinando v. Simon & Co.* [1920] 2 K. B. 704; *ibid.* [1920, C. A.] 3 K. B. 409; *Hawes v. Woolcock* (1870) 26 Wis. 629; *Marburg v. Marburg, supra* note 2; *The Hurona, supra* note 3.

[12] *Smith v. Shaw* (1808, C. C.) 2 Wash. 167; *Comstock v. Smith* (1870) 20 Mich. 338.

amount of the judgment in foreign currency which will always be conclusive. As between the date of breach and the date of judgment, the former seems clearly preferable since the aim of the courts is to make the plaintiff as nearly whole as possible, and not to enable him to speculate in foreign exchange. And where as in the ordinary contract case performance of a duty is promised for a certain date, it may be, as the majority of cases seem to hold, that damages for the breach should be assessed at the current rate of exchange[13] as of that date, both in the interest of certainty, and because the plaintiff may take steps to protect himself against non-performance.

But where, as in the tort cases, the breach of duty is unexpected, it may be unfair not to allow the plaintiff a short period to protect himself. There is a rule of damages, of fairly wide acceptance in this country, that on conversion of articles of fluctuating value, particularly stock,[14] the plaintiff should have a reasonable time in which to replace the converted articles, and his damage is therefore computed at the highest value of the articles within a reasonable time after he has notice of the breach. A similar rule applied here would lead to the selection of the date when plaintiff reasonably might have repaired his vessel. While this rule is not definitely applied in the principal case and in other similar tort cases, the result seems to approximate it.[15]

LIABILITY OF AN INFANT FOR FRAUDULENT MISREPRESENTATION

"Infantile Paralysis" is a term well applicable to the state of the law governing an infant's responsibility for his contractual and tort obligations. The rigid niceties involved are indeed perplexing. Infancy has ever been a safe base from which one might embark upon piratical expeditions against innocent adults and to the technical defences of which he could return for security. Shall its sanctity be preserved when justice obviously requires a remedy for the victims? In *Falk v. McMasters & Co.* (1921) 197 App. Div. 357, an infant had deposited money with brokers for stock margin and then sought to recover his loss from an investment made pursuant to his directions. The ground of recovery was infancy at the time of deposit and at the time of bringing suit. The brokers' defence, sustained by the court, was that the infant had induced them to contract with him by falsely and fraudulently misrepresenting his age. While the weight of authority seems to be that an infant is not estopped from using his infancy as a shield against obligations under a contract induced by his fraud,[1] there is a

[13] In a few old cases the par of exchange was applied. *Adams v. Cordis* (1829) 25 Mass. 260; *Martin v. Franklin* (1809, N. Y. Sup. Ct.) 4 John. 124.

[14] *Galligher v. Jones* (1889) 129 U. S. 193, 9 Sup. Ct. 335.

[15] Cf. McNair, *Rate of Exchange in English Judgments* (1921) 37 L. QUART. REV. 38.

[1] Where the contract is executory, the decisions are practically uniform that the defence of infancy is not lost. *Sims v. Everhardt* (1880) 102 U. S. 300; *Tobin*